
(2008) 09 PAT CK 0038
In the Patna High Court

Sarita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Constitution of India, 1950 — Article 100, 189, 368

Citation : (2008) 4 PLJR 519

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the parties.

2. The petitioner has come to this Court for quashing the decision and the proceedings of the Zila Parishad, Patna dated 11.8.2008 issued by the Respondent No. 4, the Chief Executive Officer-cum-Deputy Development Commissioner on 14.8.2008 (Annexure-3) by which he has declared the motion of no confidence taken up in the said meeting dated 11.8.2008 as having been defeated.

3. The short facts of this case are that a special meeting was duly requisitioned by the Zila Parishad, Patna for considering the motion of no confidence against respondent No. 6, the Chairman, Zila Parishad, Patna. The Zila Parishad, Patna has 46 directly elected members. On 11.8.2008 in the special meeting as many as 27 of the directly elected members participated. However, when the voting on the no confidence motion took place three of the said members including the Adhayaksha, Zila Parishad did not participate in [he voting. Out of 24 remaining members 23 voted in favour of the no confidence motion and only one voted against it. By memo No. Sa-256 dated 14.8.2008 signed by the District Magistrate, Patna, the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Patna and the Upadhyaksh, Zila Parishad, Patna it was held that since there are 46 directly elected members in the Zila Parishad whereas the

votes in favour of no confidence motion being only 23, thus, less than the majority, i.e., 24, directly elected members having voted in favour of the motion, the same stood defeated and accordingly the Adhakshya of the Zila Parishad, Smt. Shakuntala Devi shall continue on her said post. Aggrieved by the same the petitioner has come to this Court.

4. At the outset learned Counsel for the petitioner fairly submitted that there is a decision of a learned Single Judge Bench of this Court in the case of Brij Nandan Sharma Vs. The State of Bihar, in which the proposition has been laid down that no confidence motion must be passed by a majority of the total number of elected members and thus the same supports the impugned order.

5. However, learned Counsel also points out that another learned Single Judge Bench of this Court in the case of Bindu Devi and Another Vs. State of Bihar and Others, has held to the contrary that the majority in support of no confidence motion has to be that of the elected members who were present at the meeting specially convened for that purpose and thus the said decision supports the stand of the petitioner.

6. It is contended by learned Counsel for the petitioner that the latter decision correctly interprets the provisions of the Bihar Panchayat Raj Act, 1993 as it then was which are in pari materia with the provisions of the present Bihar Panchayat Raj Act, 2006. In support of the said stand learned Counsel relies upon the actual expressions used in Section 70 (4)(i) of the Act, the relevant part of which are in the following terms:

(4) (i) Adhayaksha and Up-Adhyaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of directly elected members from territorial constituencies of the Zila Parishad at a meeting specially convened for the purpose...

No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.

(v) As soon as the meeting called under this section commences, the presiding member at the meeting shall read out the motion on which the meeting has been called to consider, before the present members and declare it open for discussion. Any discussion on the motion under this section shall not be adjourned.

(vi) During discussion, opportunity shall be given to the Adhyaksha or Upadhyaksha or both against whom no confidence motion is moved, for his defence before the Zila Parishad. The motion shall be put to vote on the same day after discussion which shall take place by secret ballot in the prescribed manner by the District Magistrate.

(vii) If the motion of no confidence against the Adhyaksha or the Upadhyaksha or

both is once rejected, no fresh motion of no confidence against the Adhyaksha or the Upadhyaksha or both, as the case may be shall be brought before the Zila Parishad within a period of one year from the date of rejection of such motion.

Section 72 (2), (3) and (8) of the Act have also been referred by learned Counsel for the petitioner and are accordingly quoted below:

(2) One-third of the total number of members of the Zila Parishad shall form a quorum for transacting the business at the meeting of the Zila Parishad.

(3) All questions coming before the Zila Parishad shall be decided by a majority of votes; in case of equality of votes the Adhyaksha or the member presiding shall have casting vote.

(8) Any ordinary meeting may, with the consent of a majority of the members present, be adjourned from time to time, but no business shall be transacted at any adjourned meeting other than left undisposed at the meeting from which the adjournment took place.

7. On the basis of the aforesaid provisions it is submitted by learned Counsel for the petitioner that the motion of no confidence has to be passed by a majority of the directly elected members at a meeting specially convened for the purpose. It is submitted that the said expression used in Section 17(4)(i) thus refers to the majority of the elected members who are present at the said meeting which has been specially convened for the said purpose and thus, if such a majority of the elected members present at the meeting convened for the purpose of considering the motion of no confidence decides in favour of motion of no confidence the same must be held to have been passed and the Adhyaksha removed from his/her office.

8. It is further submitted that the reference to the members present is also borne out by the fact that no quorum is required for the said meeting whereas for any ordinary meeting a quorum of one-third of the total number of members of the Zila Parishad is required for transacting any business. It is further pointed out that such a meeting cannot be adjourned whereas an ordinary meeting can be adjourned. In support of the aforesaid stand, learned Counsel refers to the provisions of Articles 100 and 189 of the Constitution of India which in relation to the Houses of Parliament and the State Legislature provides in a similar fashion. Article 100(1) is quoted below:

100(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

Article 189 is in similar terms with respect to the State Legislature.

9. It is argued by learned Counsel that with respect to the Houses of Parliament or the State Legislature also all questions are determined by the majority of votes by the members present in voting and same principle has been laid down by the Legislature with respect to Panchayat also and that being the practice under the Constitution the provisions of the Panchayat Raj Act should be read in consonance with the same. In this regard, learned Counsel strongly relies upon the decision of the learned Single Judge of this Court in Bindu Devi's case (*supra*), in paragraph Nos. 6 and 7 of which it has been laid down as follows:

6. A look at Sub-section (3) of Section 43 of the Act would make it abundantly clear that a Pramukh as well as a Up-Pramukh of a Panchayat Samiti shall be deemed to have vacated their office forthwith a resolution expressing want of confidence in them is passed by majority of the total number of elected members of the Panchayat at a meeting specially convened for that purpose, and accordingly what is required is the mandate of the majority of the elected members, who were present at the meeting specially convened for that purpose. Sub-section (5) of Section 44 makes it abundantly clear that in order to transact business of any meeting, whether an ordinary meeting or a special meeting, the quorum required is 50% of the members entitled to attend the meeting. When Sub-section (3) of Section 43 of the Act requires that the resolution is to be passed by the elected members at a special meeting convened for the purpose of removal of a Pramukh and a Up-Pramukh, 50% of such elected members must be present in the special meeting in order to enable that special meeting to transact business of that meeting and the majority of the elected members attending that meeting, if resolved in support of the motion of removal, the Pramukh and the Up-Pramukh shall vacate their respective offices forthwith with such resolution.

7. In such view of the matter, the submission that the majority of the total number of elected members and not the majority of the total number of elected members attending the special meeting is the mandate of the statute is rejected. The writ petition fails and the same is dismissed.

10. Learned Counsel for the State, on the other hand submits that the earlier decision of this Court in the case of Brij Nandan Sharma (*supra*) correctly lays down the law that a no confidence motion can be carried out by the majority of the total number of elected members of the Panchayat and the said provisions being special provision will override any general provision with respect to transaction of other business laid down in the Bihar Panchayat Raj Act. It is further submitted that the learned Single Judge in Bindu Devi's case (*supra*) having not considered and taken into account the earlier decision the subsequent decision is per incuriam and cannot be relied upon. He specifically relies upon para-9 of the said decision in Brij Nandan Sharma's case (*supra*) which is in the following terms:

From a plain reading of Section 44(7) of the Act, it is evident that all questions shall be decided by a majority of votes of the members present and voting unless otherwise especially provided. Section 42(3) of the Act, in specific term provides that the resolution expressing want of confidence in a Pramukh or Up-Pramukh shall be passed by the majority of total number of elected members of the Panchayat. Thus, when Section 42(3) of the Act has specifically provided that motion of no-confidence can be carried out by majority of the total number of elected members of the Panchayat, the general provision will give way to the special provision. In my opinion special provision i.e. Section 42(3) having provided for passing of resolution by a majority of the total number of elected members same shall govern the field. Hence the submission of Mr. Pradhan that it shall be decided by majority of votes of the members present and voting, is not fit to be accepted.

11. On a consideration of the various provisions quoted above and the two decisions cited at the bar this Court is of the view that the latter decision in Bindu Devi's case (supra) having not taken note of the earlier decision on the same point in Brij Nandan Sharma's case (supra) is per incuriam and cannot be relied upon.

12. It is true that both the decisions related to no confidence motion against the Pramukh or Up-Pramukh of the Panchayat Samiti whereas the present matter refers to no confidence motion against the Chairman of the Zila Parishad but the provisions in this respect are practically *pari materia*. I may however, point out the slight deviation in the light of what has been considered and decided in Brij Nandan Sharma's case (supra). In the provisions with respect to the two offices in Section 44(7) of the Act of 1973 it was provided that all questions shall, unless and otherwise specially provided, be decided by a majority of votes of the members present and voting and the same words are found in Section 46(7) of the 2006 Act.

13. However, the words "unless otherwise specially provided" are not to be found in Section 72(3) of the 2006 Act with respect to proceedings before the Zila Parishad and the further expression used is that all questions shall be decided by a majority of votes. Since the said provision provides for quorum of one-third of the total members a majority of votes u/s 72(3) must be taken to refer to that of the members present in voting. However, according to me the absence of the words "unless otherwise specially provided" does not affect the merits of the decision of this Court in Brij Nandan Sharma's case (supra). The crux of the said decision was the fact that a special procedure had been provided in the matter of consideration of a no confidence motion in a special meeting which could be requisitioned only by a certain proportion of elected members and they alone were entitled to vote on the said motion.

14. So far as the submission of learned Counsel for the petitioner that the words "majority of elected members" at a meeting would lead to the conclusion that majority of those present at the meeting would be decisive in the matter, this

Court cannot agree with the said submission. The said argument does not take into account the fact that the resolution expressing want of confidence in the Adhayaksha/Up-Adhakshya has to be passed by majority of the total number of directly elected members (in the present case, of the Zila Parishad). The expression "at a meeting" has to be read in the context of the words "specially convened for the purpose" and it is thus evident that no such motion can be passed even by all or majority of the directly elected members at any meeting which has been called for considering other matters also; the use of the terms "at a meeting specially convened for the purpose" is not to qualify the majority present at the said meeting but rather indicates that a motion of no confidence can only be considered at a specially convened meeting for the purpose of considering the no confidence motion and not any other matter and the entire paraphernalia for holding such meeting for considering such matter has been laid down u/s 70(4).

15. So far as the reliance by learned Counsel for the petitioner on the provisions of Articles 100 and 189 of the Constitution are concerned, the same does not take into account the other provisions of the Constitution wherein two different expressions of "members present and voting" and "majority of the total membership of the House" have been clearly stated. One such provision is Article 368(2) of the Constitution the relevant part of which is in the following terms:

An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill....

16. It is evident from the consideration of the said provision that in the very same Article the distinction has been drawn between the majority of members of the House present and voting and majority of the total membership of the House. It is to be presumed that the Legislature while enacting Bihar Panchayat Raj Act, 2006 was aware of the said two expressions used in the Constitution of India, which was in force for 56 years when the Act came into being and the distinction between the two expressions. Hence the use of the same expression "majority of the total number of directly elected members" in Section 70(4)(i) of the Bihar Panchayat Raj Act, 2006, can only refer to the total directly elected membership of the Zila Parishad. This Court finds that the terms "majority of total number of directly elected members" and "majority of the members present and voting" are contained in several provisions of the Act of 2006 (as also of the earlier Act of 1993) and thus the distinction between the two provisions was very much present in the mind of the Legislature when it had used the said different expressions in the same Act. Hence it has to be held that the majority referred to in Section 70(4)(i) of the Act refers to a majority of the total membership of the

directly elected members of the Zila Parishad in question. In the case of the Zila Parishad, Patna the total number of directly elected members is 46. A majority of 46 members would be 24 and thus any no confidence motion to succeed in Patna Zila Parishad must be passed by at least 24 members of the said Zila Parishad.

17. So far as the reliance by learned Counsel for the petitioner on the absence of provision of quorum with respect to no confidence motion is concerned, when there is provision of quorum of one-thirds of the total members with respect to other matters, it does not in fact support the contention of learned Counsel for the petitioner. Not requiring quorum for the no confidence motion has special relevance in terms of the consequences, which follow on account of non-passing of the no confidence motion. As provided by Section 70(4)(vii) of the Act, once the motion of no confidence against the Adhayaksha or Up-Adhayaksha is rejected then no fresh motion of no confidence against the said officials can be brought again within a period of one year from the date of rejection of such motion. This provision has to be read also in conjunction with the further provision that a meeting once called for considering the no confidence motion, shall not be adjourned once notice for the same has been issued. The object of this provision appears to be that the consideration of the no confidence motion should not be allowed to be deferred by either side by absenting themselves once they find that they are in a weak position on the particular date when the meeting has been called; this is quite likely when the rival sides are more or less evenly divided and both may seek to have the meeting deferred on the ground of lack of quorum in the hope of persuading more members which can give rise to ugly horse-trading. Hence it has been laid down by the Legislature that irrespective of the presence of any number of persons the matter has to be considered and the motion of no confidence in order to succeed must be passed by a majority of the total elected membership of the Zila Parishad. It will thus not be open to any side to cause any delay by remaining absent since the motion must succeed or fail on that very date and in the absence of support from a majority of the total directly elected members, the motion would be treated to have been defeated. For the said reasons, it appears that all the various provisions, like doing away with the necessity of quorum and preventing the meeting to be adjourned, have been laid down with the object in view that motion of no confidence must be considered on the very date the meeting has been specially convened and unless supported by a majority of the total number of elected members of the House would be considered to have been defeated with the consequence that no such motion can be considered again within a period of one year thereafter.

18. The matter can be looked at from another angle. Once it is provided that the motion has to be carried out by a majority of the total membership of the Zila Parishad in order to succeed, the question of quorum itself becomes irrelevant; hence absence of the requirement for quorum in the said circumstance in the Act.

19. In view of the aforesaid discussions this Court, despite the slight differences

in the provisions of law noticed above, is of the view that the decision in Brij Nandan Sharma's case with respect to Panchayat Samiti would apply to the case of Zila Parishad also, for the additional reasons stated above.

20. So far as the reliance by the petitioners on Bindu Devi's case (supra) is concerned, the same having not noticed the earlier decision of the co-ordinate Bench, is per incuriam and thus cannot be used to support the stand of the petitioners.

The writ application is accordingly dismissed.